

**SOLICITOR**

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22315-1450</b>	<b>MAY 10 2007</b> <b>U.S. PATENT &amp; TRADEMARK OFFICE</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Eastern District of Texas, Lufkin on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 9:07cv99	DATE FILED 4/27/2007	U.S. DISTRICT COURT Eastern District of Texas, Lufkin Division
PLAINTIFF  Finisar Corporation		DEFENDANT  XM Satellite Radio Holdings, Inc., XM Satellite Radio, Inc., XM Radio, Inc., Sirius Satellite Radio, Inc. and Satellite CD Radio, Inc.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,404,505	4/4/1995	Finisar Corporation
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In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <i>David Malone</i>	(BY) DEPUTY CLERK Debbie Haschke	DATE 5/2/07
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy



45. On information and belief, individual subscribers have purchased subscriptions to receive Sirius satellite radio service and actually do receive Sirius satellite radio service pursuant to those subscriptions within the Eastern District of Texas.

**NOTICE OF FINISAR'S '505 PATENT TO XM**

46. On February 8, 2005 counsel for Finisar sent a letter to XM Satellite Radio's General Counsel ("XM Counsel") offering to license the technology claimed in the '505 patent to XM. A true and correct copy of this letter is attached hereto as Exhibit B.

47. After receiving no response to the February 8, 2005 letter, counsel for Finisar wrote a second letter to XM Counsel on June 2, 2005 reiterating Finisar's desire to meet to discuss the '505 patent and its relation to XM satellite radio service. A true and correct copy of this letter is attached hereto as Exhibit C.

48. After receiving no response to either the February 8 letter or the June 2 letter, counsel for Finisar wrote a third letter to XM Counsel on June 28, 2006 – more than one year after initially bringing the '505 patent to XM Satellite Radio's attention – again offering to license the '505 patent. A true and correct copy of this letter is attached hereto as Exhibit D.

49. As with the earlier correspondence, XM Satellite Radio again ignored Finisar's June 28, 2006 correspondence. To date, none of the XM Defendants have discussed with Finisar the relation of the '505 patent to the XM satellite radio service or Finisar's offer to license the '505 patent.

50. To protect its intellectual property rights, Finisar brought this action to seek reparations for the XM Defendants' willful infringement of Finisar's patented technology.



**NOTICE OF FINISAR'S '505 PATENT TO SIRIUS**

51. On February 8, 2005 counsel for Finisar sent a letter to Sirius' General Counsel offering to license the technology claimed in the '505 patent to Sirius. A true and correct copy of this letter is attached hereto as Exhibit E.

52. After receiving no response to the February 8, 2005 letter, counsel for Finisar wrote a second letter to Sirius' General Counsel on June 2, 2005 reiterating Finisar's desire to meet with Sirius personnel to discuss the '505 patent and its relation to the Sirius satellite radio service. A true and correct copy of this letter is attached hereto as Exhibit F.

53. After receiving no response to either the February 8 letter or the June 2 letter, counsel for Finisar wrote a third letter to Sirius' General Counsel on June 28, 2006 – more than a year after initially bringing the '505 patent to Sirius' attention – again offering to license the '505 patent to Sirius. A true and correct copy of this letter is attached hereto as Exhibit G.

54. As with the earlier correspondence, Sirius again ignored Finisar's June 28, 2006 correspondence. To date, Sirius has failed to discuss with Finisar the relation of the '505 patent to Sirius' satellite radio service or Finisar's offer to license the '505 patent to Sirius.

55. To protect its intellectual property rights, Finisar brought this action to seek reparations for the Sirius Defendants' willful infringement of Finisar's patented technology.



**INFRINGEMENT OF U.S. PATENT NO. 5,404,505**

56. Finisar realleges and incorporates herein by reference all the allegations stated in the foregoing paragraphs of this Complaint.

57. Finisar owns all right, title, and interest in the '505 patent. The '505 patent was duly and legally issued on April 4, 1995, by the United States Patent and Trademark Office.

58. Each of the defendants has infringed and continues to infringe the '505 patent by making, using, selling, offering for sale within the United States or importing into the United States systems and/or methods that embody one or more of the claims of the '505 patent, or by contributing to infringement, inducing others to infringe the '505 patent, or carrying out acts constituting infringement under 35 U.S.C. § 271(f). Such infringing conduct includes, but is not limited to, the transmission of each defendant's satellite radio service.

59. On information and belief, each of defendants has notice of the '505 patent.

60. Each of the defendants' infringement of the '505 patent is, has been, and continues to be willful and deliberate.

61. Each of the defendants will continue to infringe the '505 patent unless enjoined by this Court, which infringement has resulted and will continue to result in irreparable harm to Finisar.



62. As a direct and proximate result of each of the defendants' infringement of the '505 patent, Finisar has been and continues to be damaged in an amount yet to be determined.

**PRAYER FOR RELIEF**

Wherefore, Finisar respectfully requests that the Court:

- A. render judgment finding that each defendant has infringed and is infringing the '505 patent.
- B. find that each defendant's infringement of the '505 patent is willful;
- C. issue preliminary and permanent injunctions preventing each defendant and those in active concert or participation with that defendant from further infringement, inducement of infringement, or contributory infringement of the '505.
- D. award compensatory damages in an amount to be determined at trial;
- E. award enhanced damages pursuant to 35 U.S.C. § 284;
- F. award interest as allowed by law;
- G. declare that this case is exceptional pursuant to 35 U.S.C. § 285 and award the costs and reasonable attorney fees incurred in connection with this action; and
- H. grant such other and further relief as the Court and the jury deem just and proper.

**DEMAND FOR JURY TRIAL**

Finisar, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues triable of right by a jury.



This 27th day of April 2007.

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Attorneys for Plaintiff Finisar Corporation





\* N E W D O C \*



AO 121

**SOLICITOR**

To: <b>Commissioner of Patents and Trademarks</b> <b>PO BOX 1450</b> <b>Alexandria VA 22313-1450</b>	<b>MAY 10 2007</b> <b>U.S. PATENT &amp; TRADEMARK OFFICE</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116, you are hereby advised that a court action has been filed in the U.S. District Court for the District of Utah on the following



Patents



Trademarks:

<b>DOCKET NO.</b> 2:06cv880 DAK	<b>DATE FILED</b> 10/12/2006	<b>U.S. DISTRICT COURT</b> <b>Central District of Utah</b> <b>350 South Main Street, Room 150, Salt Lake City, UT 84101</b>
<b>PLAINTIFF</b> Provo Craft and Novelty		<b>DEFENDANT</b> Xyron
<b>PATENT OR TRADEMARK NO.</b>	<b>DATE OF PATENT OR TRADEMARK</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>
1 7,054,708	May 30, 2006	Xyron, Inc
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In the above-entitled case, the following patents(s) have been included:

<b>DATE INCLUDED</b>	<b>INCLUDED BY</b> <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
<b>PATENT OR TRADEMARK NO.</b>	<b>DATE OF PATENT OR TRADEMARK</b>	<b>HOLDER OF PATENT OR TRADEMARK</b>
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In the above-entitled case, a final decision had been rendered or judgment issued:

<b>DECISION / JUDGMENT</b> Case is DISMISSED for failure to prosecute by Judge Dale A. Kimball on 5/10/07. Order entered on 5/10/07. Case Closed.			
<table border="1"> <tr> <td><b>CLERK</b> D. Mark Jones</td> <td><b>(BY) DEPUTY CLERK</b> /s/ Bonnie King</td> <td><b>DATE</b> 5/10/07</td> </tr> </table>	<b>CLERK</b> D. Mark Jones	<b>(BY) DEPUTY CLERK</b> /s/ Bonnie King	<b>DATE</b> 5/10/07
<b>CLERK</b> D. Mark Jones	<b>(BY) DEPUTY CLERK</b> /s/ Bonnie King	<b>DATE</b> 5/10/07	

**DISTRIBUTION :**

1) Upon initiation of action  
mail copy to Commissioner &  
lodge a copy in the file

2) Upon filing of document adding copyright(s),  
mail copy to Commissioner &  
lodge a copy in the file

3) Upon termination of action ,  
mail copy to Registrar of Copyrights &  
lodge a copy in the file.



IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

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PROVO CRAFT AND NOVELTY,

Plaintiffs,

vs.

XYRON,

Defendant.

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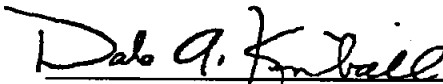
**ORDER OF DISMISSAL**

Civil No. 2:06-cv-880 DAK

On March 15, 2007, this Court issued an order requiring counsel for plaintiffs to show cause why the above-entitled case should not be dismissed for lack of prosecution. No response to that order has been received.

Wherefore, good cause appearing, the Court hereby ORDERS this case DISMISSED for failure to prosecute.

Dated this 10th day of May, 2007.



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Dale A. Kimball

United States District Judge



**FILED**  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

APR 27 2007

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

DAVID J. MALAND, CLERK

DEPUTY \_\_\_\_\_

FINISAR CORPORATION .

Plaintiff,

v.

XM SATELLITE RADIO HOLDINGS INC.,  
XM SATELLITE RADIO, INC.,  
XM RADIO, INC.,  
SIRIUS SATELLITE RADIO, INC. and  
SATELLITE CD RADIO, INC.

Defendants.

CIVIL ACTION  
NO. \_\_\_\_\_

9:07cv99



**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Finisar Corporation ("Finisar") hereby alleges and complains as follows:

**THE PARTIES**

1. Finisar is a Delaware Corporation with a principal place of business at 1389 Moffett Park Drive, Sunnyvale, California 94089.
2. Defendant XM Satellite Radio Holdings Inc. ("XM Holdings") is a Delaware Corporation with a principal place of business at 1500 Eckington Place NE, Washington, DC 20002-2194.
3. Defendant XM Satellite Radio, Inc. ("XM Satellite Radio") is a Delaware Corporation with a principal place of business at 1500 Eckington Place NE, Washington, DC 20002-2194.



4. Defendant XM Radio, Inc. ("XM Radio") is a Delaware Corporation with a principal place of business at 1500 Eckington Place NE, Washington, DC 20002-2194.

5. Defendant Sirius Satellite Radio Inc, ("Sirius") is a Delaware Corporation with a principal place of business at 1221 Avenue of the Americas, 36<sup>th</sup> Floor, New York, New York 10020.

6. Defendant Satellite CD Radio, Inc. is a Delaware Corporation with a principal place of business at 1221 Avenue of the Americas, 36<sup>th</sup> Floor, New York, New York 10020.

#### **JURISDICTION**

7. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

#### **VENUE**

9. Venue in the Eastern District of Texas is proper pursuant to 28 U.S.C. § 1391(b) and (c) and 1400(b), in that a substantial part of the events giving rise to Finisar's claims occurred in this district, the defendants may be found and/or reside in this district by virtue of their activities in this district, and the defendants have committed acts of patent infringement in this district.

#### **BACKGROUND**

10. Finisar is a technological leader in fiber optic subsystems and network performance test systems that enable high-speed data communications for networking and



storage applications over Gigabit Ethernet local area networks, Fibre Channel storage area networks, and metropolitan area networks using both IP and SONET/SDH-based protocols.

11. Frank Levinson and Jerry Rawls founded Finisar, which was incorporated in April of 1987 in California and began operations in Menlo Park, California on February 22, 1988.

12. On November 11, 1999, Finisar went public with a very successful initial public offering that yielded net proceeds of \$151 million. An additional public offering on April 7, 2000, yielded another \$190.6 million.

13. Frank Levinson obtained a B.S. in Mathematics/Physics from Butler University and a M.S. and Ph.D. in Astronomy from the University of Virginia. Before founding Finisar, Dr. Levinson worked as a principal optics scientist at Raychem Corporation and Optical Department Manager at Raynet, Inc. Dr. Levinson presently resides in Indiana and is Chairman and Chief Technical Officer of Finisar.

14. Jerry Rawls obtained a B.S. in Mechanical Engineering from Texas Tech University ("Texas Tech") and a M.S. in Industrial Administration from Purdue University. Before founding Finisar, Mr. Rawls held various management positions at Raychem Corporation, including Manager of Product Marketing, National Sales Manager, General Manager of the Aerospace Product Division, and General Manager of the Interconnection Systems Division. Mr. Rawls presently resides in northern California and is the President and Chief Executive Officer of Finisar.



15. In recognition of his involvement and contributions to Texas Tech, Texas Tech named its College of Business Administration and golf course after Mr. Rawls.

16. At the beginning of its operations, Finisar had very little capital and no outside capital funding, and relied principally on financing secured by mortgages on Dr. Levinson's and Mr. Rawls' homes. Finisar's first headquarters was a small, 1,400 square foot Quonset hut furnished with an old couch, a used desk, an old chair, a couple of benches, a fax machine, and a copy machine.

17. To survive during its first few years of operation, Finisar provided contract engineering work and earned \$350,000 in revenue in its first year.

18. One of Finisar's early customers, Explore Technology (now Burst.com), asked Finisar to develop a prototype product, an audio or video server capable of bursting data to the client faster than real-time rates, for demonstration at the January 1991 Consumer Electronics Show ("CES") in Las Vegas, Nevada.

19. Finisar agreed and began developing the desired product.

20. Finisar completed two prototypes just in time to load the devices into a rented van and drive to Las Vegas for the January 1991 show. The prototypes drew considerable attention at the 1991 CES with the *Christian Science Monitor* reporting that "[t]he technology has the capacity to revolutionize the transmission and reception of programming for broadcast and cable operators."

21. From its simple inception, Finisar has expanded into a multinational company encompassing several divisions today.



22. Two of Finisar's divisions are headquartered in Texas. These divisions are doing business as Medusa Labs and Advanced Optical Components ("AOC").

23. Medusa Labs tests its customers' products to ensure they will survive the demands of their respective applications. It also provides training on Fibre Channel, storage area networks, and other emerging technologies. Medusa Labs is located in Austin, Texas.

24. AOC manufactures Vertical-Cavity Surfaces Emitting Lasers (VCSELs), sensors and components used with VCSELs. AOC is located in Allen, Texas.

25. Finisar employs approximately 235 employees at these Texas divisions.

#### **THE PATENTED TECHNOLOGY**

26. During Finisar's early years, Dr. Levinson began thinking about distribution of a large database, including video and audio, to a large subscriber base.

27. This catalyst sparked Dr. Levinson's desire to develop a system that could deliver a large amount of information to numerous subscribers with only a modest amount of bandwidth.

28. In developing such a system, Dr. Levinson's goal was to engineer a system that was unlike any other system available at the time.

29. By November of 1991, Dr. Levinson filed a patent application on information broadcasting systems and methods for providing a large group of subscribers access to a large amount of information. This technology is disclosed and claimed in United States Patent No. 5,404,505, entitled "Systems for Scheduling Transmission of Indexed and



Requested Database Tiers on Demand at Varying Repetition Rates” (“the ‘505 patent”). A true and correct copy of the ‘505 patent is attached hereto as Exhibit A.

30. During the time Dr. Levinson invented the technology of the ‘505 patent, Finisar also developed other technologies, primarily in the optoelectronic industry. Since its inception, Finisar was the first to market with, among other products, transceivers with digital diagnostics, SFP transceivers and CWDM GBIC transceivers. Today Finisar is a leader in gigabit fiber optic solutions for high-speed data networks. As a technology leader, Finisar continues to innovate in a number of technologies.

31. Like Finisar’s other groundbreaking technologies, the pioneering invention of the ‘505 patent was well before its time. Although Finisar did not ultimately commercialize the technology of the ‘505 patent, it has sought to license the ‘505 patent to potential partners.

#### **THE DEFENDANTS**

32. On information and belief, XM Holdings is the parent holding company that owns or controls, among other companies, XM Satellite Radio and XM Radio. Through these and other affiliated companies, XM Holdings provides satellite radio service, including music, news, talk, information, entertainment and sports programming for reception by vehicle, home and portable radios nationwide (collectively “XM satellite radio service”), to over 6 million subscribers in the United States. On information and belief, XM Satellite Radio currently is and has been operating the XM satellite radio service in the United States and holds one or more licenses issued by the FCC respecting such service. On information



and belief XM Radio has been the holder of one or more licenses issued by the FCC respecting the XM satellite radio service. Collectively, these three defendants are referred to as the "XM Defendants."

33. On information and belief, XM satellite radio service is distributed to subscribers over more than 160 channels, which include 67 commercial-free music channels, 34 news, talk, and entertainment channels, 39 sports channels, 21 instant traffic and weather channels, and 1 emergency alert channel. The 21 instant traffic and weather channels report continuously updated information from various major markets.

34. On information and belief, subscribers receive XM satellite radio service through radios installed in vehicles, home radios, and hand-held radios, as well as via online access to XM satellite radio service over the Internet.

35. On information and belief, many XM radios include memory features as well as the ability to notify the subscriber when a particular artist or song is playing on XM.

36. On information and belief, equipment to receive XM satellite radio service is offered for sale and has been sold within the Eastern District of Texas.

37. On information and belief, subscriptions to receive XM satellite radio service are offered for sale and have been sold within the Eastern District of Texas.

38. On information and belief, individual subscribers have purchased subscriptions to receive XM satellite radio service and actually do receive XM satellite radio service pursuant to those subscriptions within the Eastern District of Texas.



39. On information and belief, Sirius provides satellite radio service, including commercial-free music and sports, talk, entertainment, traffic, weather and data content (collectively "Sirius satellite radio service"), to over 3 million subscribers in the United States. On information and belief, Sirius through its subsidiary Satellite CD Radio, Inc. has obtained a license from the FCC respecting the Sirius satellite radio service. Collectively, these two defendants are referred to as the "Sirius Defendants."

40. On information and belief Sirius satellite radio service is distributed to subscribers via 133 channels, which include 69 commercial-free music channels and 64 additional channels of sports, talk, entertainment, traffic, weather and data content. The traffic channels offer continuous, local traffic reports.

41. On information and belief, subscribers receive Sirius satellite radio service through radios installed in vehicles, home radios, and portable radios, as well as via online access to Sirius satellite radio service over the Internet.

42. On information and belief, many Sirius radios include memory features as well as the ability to notify the subscriber when a particular artist or song is playing on Sirius.

43. On information and belief, equipment to receive Sirius satellite radio service is offered for sale and has been sold within the Eastern District of Texas.

44. On information and belief, subscriptions to receive Sirius satellite radio service are offered for sale and have been sold within the Eastern District of Texas.